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BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Jurisdictional Separations Reform and the Jurisdictional Separations Freeze, CC
Docket No. 80-286

Notice of *Ex Parte* presentation

Yesterday, Joe Douglas and Colin Sandy of the National Exchange Carrier Association (NECA); Jay Driscoll of the Independent Telephone and Telecommunications Alliance; Stuart Polikoff of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Derrick Owens of the Western Telecommunications Alliance (collectively, the "Associations") met with Jessica Rosenworcel of Commissioner Copps' office to discuss the need to extend the current separations freeze, scheduled to expire in June of this year.

The Associations strongly support extension of the freeze as necessary to avoid imposing substantial administrative burdens on incumbent local exchange carriers (ILECs)¹ and to allow the Commission time to complete ongoing intercarrier compensation and universal service proceedings. Extension of the freeze on an interim basis will give the Commission time to consider carefully how changes in regulatory requirements (as well as evolving marketplace dynamics) actually affect the Commission's Part 36 separations rules. The Associations also expressed support of the legal analysis in a USTelecom letter responding to NARUC. USTelecom demonstrated that ordering an extension of the freeze on an interim basis without a referral to the Federal-State Joint Board on Separations is within the Commission's legal authority.

Consistent with the above, the Associations request the Commission act without delay to extend the freeze on an interim basis, pending resolution of ongoing regulatory proceedings and, as necessary,

¹ These burdens have been documented in recent *ex parte* filings before the Commission, most notably in a USTelecom White Paper entitled "Paving the Way for Jurisdictional Separations Reform". See Letter from Robin E. Tuttle, USTelecom, to Marlene H. Dortch, FCC (Dec. 21, 2005), Attachment (*USTelecom White Paper*).

institution of additional proceedings to consider specifically how the separations rules should be conformed to revised intercarrier compensation and universal service regimes.

The Associations also discussed an apparently unintended consequence of the 2001 separations freeze order, which created a “one-way ratchet” effect on the amount of Local Switching Support (LSS) a carrier receives. Specifically, the separations freeze order directed carriers that gain access lines and cross a dial equipment minutes (DEM) weighting threshold to use a lower DEM weighting factor and receive less LSS. However, the separations freeze order failed to address the effects on carriers that *lose* access lines and cross a DEM weighting threshold. Consequently, these carriers are unable to raise their DEM weighting factor and receive increased LSS, as the Commission’s rules otherwise would permit. This phenomenon is explained in greater detail in the attached document from JSI, Inc. The Associations support JSI’s position that when granting continuation of the separations freeze, the FCC should declare in its order that a change in DEM weighting apply to both increases and decreases in access lines. However, under no circumstances do we wish this existing inequity to be a stumbling block to an expeditious interim extension of the freeze.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe A. Douglas".

On Behalf of:

National Exchange Carrier Association, Inc.
Independent Telephone & Telecommunications Alliance
Organization for the Promotion and Advancement of Small Telecommunications Companies
Western Telecommunications Alliance

Jurisdictional Separations Factor Freeze

1. There is overwhelming support for continuing the jurisdictional separations allocation factor freeze beyond the current freeze period ending June 30, 2006.
2. The freeze obviates the need to perform costly traffic studies that have not been required since the beginning of the freeze period.
3. Federal High-Cost Local Switching support (LSS) is based in part on a Part 36 rule regarding local switching equipment and appropriately weighing dial equipment minutes of use (DEM). 47 CFR § 36.125
4. The DEM weight is a 1x, 2x, 2.5x or 3x multiple of DEM. The DEM weight is based on access lines served in a study area. It is not part of the costly traffic studies rendered unnecessary by the current factor freeze.
5. A study area serving fewer access lines is assigned a greater DEM weight. This DEM weight provides a study area with a greater amount of federal high-cost local switching support (LSS).
6. The threshold for 2.5x and 3x DEM weight is 10,000 access lines served. 47 CFR § 36.125 If a carrier's study area access lines increases and crosses this threshold the DEM weight changes from 3x to 2.5x.
7. The current FCC rule 47 CFR § 36.125(j) states:
 - a. (j) If during the period from January 1, 1997, through June 30, 2006, the number of a study area's access lines increased or will increase such that, under §36.125(f) the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. The study area will restate its Category 3, Local Switching Equipment factor under §36.125(f) and use that factor for the duration of the freeze period.
8. This rule is a one-way ratchet for the duration of the freeze period.
 - a. Carriers who realize an increase in access lines in their study area and cross a DEM weight threshold are required to use a lower factor for the duration of the freeze period.
 - b. However, carriers who realize a decrease in access lines in their study area and cross a DEM weight threshold cannot use a higher factor for the duration of the freeze period.
9. It appears that the intent of the rule was to not freeze the DEM weight as carrier access changed during the freeze period. However, while increased access line changes required a change to the DEM weight, apparently no consideration was given to changing the DEM weight for decreases in access lines through a threshold level.
10. There are rural carriers that have realized a decrease in access lines in their study areas. This has happened, for example, as customers decrease their use of second lines for dial-up Internet service from the 2001 to the present.
11. When granting a continuation of the jurisdictional separations factor freeze, the Commission should recognize the DEM weight assignment mechanics and declare in its order that change in DEM weighting apply to both increases and decreases in access lines during any extension of the freeze.